IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

TRC.No. 467 of 2001()

AITA.355/1990 OF THE KERALA AGRICULTURAL INCOME TAX APPELLATE TRIBUNAL, ADDL.BENCH, KOTTAYAM

PETITIONER: APPELLANT:RESPONDENT:REVENUE:

STATE OF KERALA, REPRESENTED BY
DEPUTY COMMISSIONER (LAW)
COMMERCIAL TAXES, ERNAKULAM.

BY SPECIAL GOVERNMENT PLEADER FOR TAXES
SRI.V.V.ASHOKAN

RESPONDENT:RESPONDENT:APPELLANT:ASSESSEE:

M/S.NELLIAMPATHI TEA & PRODUCE CO. LTD.,
ALAPPUZHA.

BY ADVS. M/S.A.K.JAYASANKAR NAMBIAR
AND ANIL D. NAIR

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 12/06/2007, ALONG WITH TRC NOS. 489, 485 AND 487 OF 2001, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

T.R.C.NOS.467, 489, 485 & 487 OF 2001

Dated this the 12th June, 2007

JUDGMENT

H.L.DATTU, C.J.

Since common questions of law are involved in all these revision petitions, we have heard and disposed of all these revisions by this common judgment.

2. These revision petitions would arise under the provisions of the Agricultural Income Tax Act, 1950 (hereinafter, for the sake of convenience, referred to as `Act 1950'). In these revision petitions we are concerned with the assessment years 1978-79, 1979-80, 1982-83 and 1983-84.

3. The assessee is the company incorporated under the provisions of the Companies Act. It owns cardamom estates. For the aforesaid assessment years, while filing its return before the assessing authority, it had claimed deduction of the amounts spent for vacancy filling, in other words, expenses for planting new plants. The claim had been rejected by the assessing authority. However, the first appellate authority and the Tribunal had concurred with the claim made by the assessee and thereby had granted deduction of the amounts spent for vacancy filling or in the alternative for planting new plants. Aggrieved by the orders so passed by the Appellate Tribunal for the aforesaid assessment years, the Revenue is before us in these revision petitions filed under Section 78 of the Kerala Agricultural Income Tax Act, 1991.

4. In these revision petitions the Revenue has raised the following questions of law for our consideration and decision. They are as under:

> "(a) Is not the Tribunal in error in holding that the assessee is eligible for deduction of the expenses incurred by it for planting new plants in the estate?
>
> (b) Is not the claim for deduction of expenses incurred for immature plants in the area is hit by Explanation 2 to Section 5 of the Kerala Agricultural Income Tax Act, 1950?"

5. In our view, no effort need be made by us to answer the aforesaid questions of law, for the reason that this Court in the case of **Commissioner of Agricultural Income Tax** v. **Midland Rubber and Produce Co. Ltd.** ((1990) 182 I.T.R. 493) has stated as under:

> "Lastly, we deal with question No.5. The Tribunal allowed expenses relating to replacement of plants in the cardamom area. The plea put forward by the Revenue was that it related to immature plants and so expenditure on new plants, though in the mature area, and should be capitalised. The Tribunal found that the assessee has only interplanted new cardamom plants in the place of the ones which got dried up and decayed and in order to keep the estate well-kept, a uniform planted area should be kept as a matter of routine. It also held that no new planting was done in the process and what was done was only in the nature of filling up of vacancy and not in the form of "new plantation". On this finding, it is evident that no question of allowing an expenditure, much less a capital expenditure, is involved calling in aid Explanation (2) to section 5 of the Act. In the light of the finding of the Tribunal that what was done is only the filling up of the vacancy as a matter of routine and for keeping a uniform planted area, the expenditure incurred was rightly held to be revenue expenditure. No question of law, formulated as question No.5, arises on the facts of the case. Therefore, we decline to refer the question."

6. The view expressed by this Court is binding on us. Further, we are in respectful agreement with the view expressed by the Division Bench of this Court in the

aforesaid decision.

7. In view of the above, the questions of law framed by the Revenue require to be answered in the negative and against the Revenue.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T. SANKARAN)
Judge

ahz/DK

H.L.DATTU,C.J. &
K.T.SANKARAN, J.

T.R.C.NOS.467, 489, 485 &
487 OF 2001

JUDGMENT

12th June, 2007